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COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON INVESTOR PROTECTION, ENTREPRENEURSHIP AND CAPITAL MARKETS
SUBCOMMITTEE ON HOUSING, COMMUNITY DEVELOPMENT AND INSURANCE

COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEE ON WESTERN HEMISPHERE, CIVILIAN SECURITY, MIGRATION AND INTERNATIONAL ECONOMIC POLICY
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Congress of the United States
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September 24, 2021

The Honorable Nancy Pelosi
The Speaker of the House
H-232, The Capitol
Washington, D.C. 20515

The Honorable Chuck Schumer
Majority Leader
322 Hart Senate Office Building
Washington, D.C. 20510

Dear Speaker Pelosi and Majority Leader Schumer,

We write to share our concern with several key provisions included in the Build Back Better Act that would jeopardize U.S. energy independence, harm American jobs, raise energy costs, and increase global emissions. We are eager to work with you to get this once in a lifetime opportunity right.

We support taxation policies that require corporations to pay their fair share. However, we cannot afford to foster anticompetitive behavior or incentivize companies to harbor earnings overseas rather than here in the U.S. As you know, the Tax Cuts and Jobs Act (TCJA) created a global minimum tax regime called Global Intangible Low-Taxed Income (GILTI), imposing a minimum 13.125% tax on foreign earnings – foreign earnings taxed below that rate in the local jurisdiction are subject to GILTI. GILTI was primarily targeted at highly mobile income from intangible property. Understanding that not all asset categories should be treated the same, it included a 10% deduction for qualified business asset investment (QBAI) which is meant to approximate a routine return generated by tangible assets such as factories. We believe increases to the GILTI tax would inhibit U.S. competitiveness abroad and risk American jobs and capital investments.

The second issue relates to the House Energy and Commerce Committee's methane fee and Clean Electricity Performance Program. The proposed methane per-ton fee is $1500/ton of methane above the respective intensity thresholds. This massive fee will regress onto consumers, disproportionately hurting low-income households, and divert resources away from complying with new federal regulations and investing in technology to drive down greenhouse gas emissions. This may also duplicate or conflict with the Environmental Protection Agency (EPA) and Pipeline and Hazardous Materials Safety Administration's (PHMSA) ongoing methane regulatory efforts.

The proposed Clean Electricity Performance Program defines clean electricity as generation with a carbon intensity of less than 0.1 metric ton of carbon dioxide equivalent per megawatt-hour — essentially ruling out natural gas without the deployment of carbon capture technologies, which are still in need of investment and exploration for broad implementation. This policy neglects the role natural gas plays in lowering U.S. emissions in the power sector. Natural gas is the lowest-carbon fossil fuel and brings stability to the electricity grid. The U.S. is the largest and cleanest producer of natural gas in the world. Obstructing the power sector from utilizing natural gas would deprive us the opportunity to lead world innovation to reduce emissions while increasing reliability.

We also believe that there is no demonstrated need to tighten the rules for dual capacity. Our current regulations require taxpayers to prove the extent to which foreign levies are in fact income taxes rather than payments in exchange for economic benefits. This proposal would artificially limit foreign tax credits claimed, likely resulting in double taxation - the income first taxed by foreign governments and then by the U.S. government - inhibiting American companies' ability to access and produce oil and gas from foreign sources. This would create opportunities for foreign-based, less environmentally conscious producers to fill the void since they are not subject to U.S. taxes.

The last issue relates to the House Committee on Natural Resources, which passed its portion of the budget reconciliation bill on September 9, 2021. Within the text, there are 23 oil and natural gas cost-related provisions that disincentivize federal lease bidding, raise the cost of production, exclude lands rich with natural resources from natural gas and oil development, and significantly increase the cost of pipeline transportation. Many of these policies overlap and will be hugely burdensome on an industry leading us to a cleaner future and offering our fellow Americans good-paying jobs.

The demand for energy will continue to rise, especially as the economy recovers from COVID-19, and while we wait for the technology and infrastructure of the future to emerge, or as solar and wind become more prominent, we should not disadvantage our nation in the name of the cause without real benefit. The Build Back Better Act is rightly aimed to keep our promises in the Paris Accords and combat the growing crisis of climate change. However, the United States has an opportunity to lead the world in responsible energy production while preparing the world for a low carbon future. We urge you to consider the ways in which our tax code can influence the prosperity of our people, and to reconsider some of the revenue raising provisions of this otherwise sound and critical effort.

Sincerely,

Vicente Gonzalez Member of Congress	Henry Cuellar Member of Congress	Filemon Vela Member of Congress